

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WRI GOLDEN STATE, LLC,

Plaintiff

v.

SAVE MART SUPERMARKETS, d/b/a  
FOOD MAXX,

Defendant

No. C-07-1480 MMC

**ORDER DENYING COUNTER-  
CLAIMANT'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT; GRANTING IN  
PART AND DENYING IN PART  
COUNTER-DEFENDANT'S MOTION TO  
EXCLUDE EVIDENCE OR,  
ALTERNATIVELY, TO PERMIT  
DEPOSITIONS**

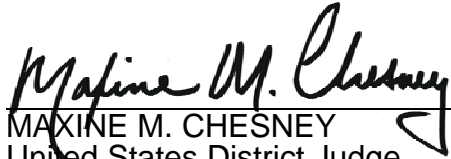
Before the Court is counter-claimant Save Mart Supermarket's ("Save Mart") "Motion for Partial Summary Judgment," filed March 28, 2008. Also before the Court is counter-defendant WRI Golden State, LLC's ("WRI") "Motion to Exclude Undisclosed Evidence or, in the Alternative, to Permit Deposition of Witnesses Disclosed After the Close of Non-Expert Discovery," filed April 10, 2008. The matters came on regularly for hearing on May 16, 2008. Daniel J. Muller of Thelen Reid Brown Raysman & Steiner LLP appeared on behalf of Save Mart. John D. Fairbrook and Arthur B. Mark III of Trainor Fairbrook appeared on behalf of WRI. Having considered the papers filed in support of and in opposition to the motions, and the arguments of counsel, the Court, for the reasons stated on the record at the hearing, rules as follows:

1. Save Mart's motion for partial summary judgment is hereby DENIED; and

1           2. WRI's motion to exclude or, alternatively, to permit depositions is hereby  
2 GRANTED in part; specifically, WRI is afforded leave to depose David Nasaw and Robert  
3 W. Smith. In all other respects, the motion is hereby DENIED as moot.

4           **IT IS SO ORDERED.**

5  
6 Dated: May 16, 2008

  
MAXINE M. CHESNEY  
United States District Judge